

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KRISANNE L. HENSLEY,

Plaintiff,

v.

10 CAROLYN W. COLVIN, Acting
11 Commissioner of Social Security
Administration.

Defendant.

NO: 12-CV-0180-TOR

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

14 BEFORE THE COURT are the parties' cross motions for summary
15 judgment (ECF Nos. 20 and 23). Plaintiff is represented by Maureen J. Rosette.
16 Defendant is represented by Brett E. Eckelberg. This matter was submitted for
17 consideration without oral argument. The Court has reviewed the administrative
18 record and the parties' completed briefing and is fully informed. For the reasons
19 discussed below, the Court grants Defendant's motion and denies Plaintiff's
20 motion.

1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g);
3 1383(c)(3).

4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
7 limited: the Commissioner's decision will be disturbed "only if it is not supported
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
9 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means
10 relevant evidence that "a reasonable mind might accept as adequate to support a
11 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,
12 substantial evidence equates to "more than a mere scintilla[,] but less than a
13 preponderance." *Id.* (quotation and citation omitted). In determining whether this
14 standard has been satisfied, a reviewing court must consider the entire record as a
15 whole rather than searching for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. If the evidence in the record "is
18 susceptible to more than one rational interpretation, [the court] must uphold the
19 ALJ's findings if they are supported by inferences reasonably drawn from the
20 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
4 The party appealing the ALJ’s decision generally bears the burden of establishing
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
13 “of such severity that he is not only unable to do his previous work[,] but cannot,
14 considering his age, education, and work experience, engage in any other kind of
15 substantial gainful work which exists in the national economy.” 42 U.S.C. §
16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [his or her] physical or mental ability to do basic work
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 several impairments recognized by the Commissioner to be so severe as to
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
15 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
16 severe than one of the enumerated impairments, the Commissioner must find the
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
3 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
10 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's
13 RFC, the claimant is capable of performing other work in the national economy.
14 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
15 the Commissioner must also consider vocational factors such as the claimant's age,
16 education and work experience. *Id.* If the claimant is capable of adjusting to other
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
18 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
19 work, the analysis concludes with a finding that the claimant is disabled and is
20 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.

2 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
3 the analysis proceeds to step five, the burden shifts to the Commissioner to
4 establish that (1) the claimant is capable of performing other work; and (2) such
5 work "exists in significant numbers in the national economy." 20 C.F.R. §§
6 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

7 ALJ'S FINDINGS

8 Plaintiff filed applications for disability insurance benefits and supplemental
9 security income disability benefits on December 15, 2008. Tr. 131-36. These
10 applications were denied initially and upon reconsideration and a hearing was
11 requested. Tr. 84-85, 86-87, 96-97. A hearing was held before an Administrative
12 Law Judge on April 14, 2010. Tr. 42-83. The ALJ rendered a decision denying
13 Plaintiff benefits on August 20, 2010. Tr. 18-35.

14 The ALJ found that Plaintiff met the insured status requirements of Title II
15 of the Social Security Act through December 31, 2009. Tr. 23. At step one, the
16 ALJ found that Plaintiff had not engaged in substantial gainful activity since
17 January 1, 2006, the alleged onset date. Tr. 23. At step two, the ALJ found that
18 Plaintiff had severe impairments, but, at step three, the ALJ found that Plaintiff's
19 impairments did not meet or medically equal a listed impairment. Tr. 23-25. The

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ALJ determined Plaintiff had the residual functional capacity to:

perform less than a full range of light work as defined in 20 C.F.R. 404.1567(b) and 416.967(b). She can lift 10 pounds frequently and 20 pounds occasionally. She can walk and stand for about 6 hours in an 8 hour day. She can occasionally balance, stoop, kneel, crouch, and crawl. She can occasionally climb ramps and stairs but cannot climb ladders, ropes, or scaffolds. She is limited in reaching in all directions. She can handle frequently, but not constantly. She has no limitations in fingering. She should avoid concentrated exposure to extreme heat or cold; wetness; humidity; hazards; and fumes, dusts, gases, and odors. She can perform simple tasks and more detailed tasks if well learned. She can have no more than superficial exposure with the public and no more than occasional contact with co-workers.

Tr. 25-26. At step four, the ALJ found that Plaintiff was unable to perform her past relevant work. Tr. 29. At step five, the ALJ considered the Plaintiff's age, education, work experience, and residual functional capacity, and concluded that there are jobs that exist in significant numbers in the national economy that the Plaintiff can perform. Tr. 30-31. Thus, the ALJ concluded that Plaintiff was not disabled and denied her claims on that basis. *Id.*

The Appeals Council denied Plaintiff's request for review on March 5, 2012, making the ALJ's decision the Commissioner's final decision for purposes of judicial review. Tr. 1-7; 20 C.F.R. §§ 404.981, 416.1484, and 422.210.

ISSUES

Plaintiff raises two issues for review; whether the ALJ properly considered and rejected the opinion of W. Scott Mabee, Ph.D. and whether the ALJ properly

1 considered and rejected Plaintiff's testimony regarding her impairments. ECF No.
2 21 at 12-15, 15-17.

3 DISCUSSION

4 **A. Examining Psychologist's Opinion**

5 Plaintiff contends that she was more limited from a psychological standpoint
6 than what was determined by the ALJ. ECF No. 21 at 13. Specifically, she
7 contends that the ALJ improperly afforded less weight to the two opinions of
8 examining source W. Scott Mabee, Ph.D. *Id.* at 13–15.

9 A treating physician's opinions are entitled to substantial weight in social
10 security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
11 (9th Cir. 2009). If a treating or examining physician's opinion is uncontradicted,
12 an ALJ may reject it only by offering "clear and convincing reasons that are
13 supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th
14 Cir. 2005). "However, the ALJ need not accept the opinion of any physician,
15 including a treating physician, if that opinion is brief, conclusory and inadequately
16 supported by clinical findings." *Bray*, 554 F.3d at 1228 (quotation and citation
17 omitted). "If a treating or examining doctor's opinion is contradicted by another
18 doctor's opinion, an ALJ may only reject it by providing specific and legitimate
19 reasons that are supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d
20 at 1216 (citing *Lester v. Chater*, 81 F.3d 821, 830-831 (9th Cir. 1995)).

1 Dr. Mabee supervised the administration of two examinations of Plaintiff,
2 one in November 2008 and the other in May 2009. Tr. 333-42, 456-61, 520-523.
3 While the underlying examiners concluded that Plaintiff presented marked and
4 moderate limitations in certain aspects, the ALJ rejected these conclusions:

5 I give less weight to the November 2008 medical opinion of DSHS
6 evaluator, W. Scott Mabee, Ph.D, who concluded that the claimant
7 had marked limitations in judgment/decision making and marked
8 limitations in nearly all aspects of social functioning. The opinion is
9 inconsistent with the objective findings from the evaluation, findings
10 recorded by examiner, Steven Erickson, M.Ed., and co-signed by Dr.
11 Mabee. For example, the claimant was cooperative, articulate, and
12 responsive to questions. She had largely normal orientation, speech,
13 and concentration and she exhibited effective, appropriate
14 interpersonal skills. Moreover, the opinion is not consistent with the
15 claimant's reported activities that include shopping, using public
16 transportation, and living in a residence with other people.

17 I give less weight to Dr. Mabee's May 2009 medical opinion that the
18 claimant had moderate limitations in cognitive and social factors. The
19 opinion is not consistent with the objective findings from the
20 evaluation, findings recorded by examiner, Amy Robinson, M.S., and
co-signed by Dr. Mabee. For instance, part A of the Trail Making test
was normal; the claimant had normal attention, concentration, and
orientation; and she scored a near perfect 29 out of 30 on the test of
cognitive mental status, accurately performing serial sevens and
recalling two of three words after a delay. The Beck Depression
Inventory and the Hamilton Anxiety Rating Scale reflected only mild
depression and anxiety. Moreover, the opinion is no consistent with
the claimant's daily activities, as discussed above.

21 Tr. 29 (internal citations omitted). The ALJ gave significant weight to the opinions
22 of state agency psychological consultants James Baily, Ph.D., and Mary Gentile,
23 Ph.D. Tr. 28. The consultants conducted a comprehensive review of the medical

1 record and their opinions were consistent with objective medical evidence. *Id.* For
2 instance, in the November 2008 psychological evaluation, the claimant was
3 cooperative, articulate, and responsive to questions. Tr. 28; 330-40. She had
4 largely normal orientation, speech, and concentration and she exhibited effective,
5 appropriate interpersonal skills. *Id.* She achieved a normal score 30 out of 30 on
6 the mini-mental status examination and the Trail Making test indicated no
7 impairment. Tr. 29; 339.

8 Plaintiff's May 2009 examination produced similar findings. Tr. 27; 459-60.
9 Plaintiff scored 29 out of 30 on her mental status examination. Tr. 459. Plaintiff's
10 attention and concentration were normal, and she was fully oriented. Tr. 459. The
11 consultants' opinions were also consistent with the claimant's reported daily
12 activities. Tr. 29.

13 Plaintiff's interpretation of the evidence is insufficient to require this Court
14 to reverse the ALJ's decision when that decision is supported by substantial
15 evidence and the ALJ gives specific and legitimate reasons for discounting
16 Plaintiff's examining psychologist, as was done in this case. *See also Tonapetya v.*
17 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (explaining that "a contrary opinion of
18 a non-examining medical expert . . . may constitute substantial evidence when it is
19 consistent with other independent evidence in the record.").

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B. Plaintiff's Credibility

Plaintiff contends that she was more limited from a physical standpoint than what was determined by the ALJ. ECF No. 21 at 15-17. Specifically, Plaintiff contends the ALJ did not properly consider nor reject her testimony regarding her impairments. *Id.*

In social security proceedings, a claimant must prove the existence of physical or mental impairment with “medical evidence consisting of signs, symptoms, and laboratory findings.” 20 C.F.R. § 404.1508. A claimant’s statements about his or her symptoms alone will not suffice. 20 C.F.R. §§ 404.1508; 404.1527. Once an impairment has been proven to exist, the claimant need not offer further medical evidence to substantiate the alleged severity of his or her symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). As long as the impairment “could reasonably be expected to produce [the] symptoms,” 20 C.F.R. § 404.1529(b), the claimant may offer a subjective evaluation as to the severity of the impairment. *Id.* This rule recognizes that the severity of a claimant’s symptoms “cannot be objectively verified or measured.” *Id.* at 347 (quotation and citation omitted).

In the event that an ALJ finds the claimant's subjective assessment unreliable, however, "the ALJ must make a credibility determination with findings sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not

1 arbitrarily discredit claimant's testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958
2 (9th Cir. 2002). In making such a determination, the ALJ may consider, *inter alia*:
3 (1) the claimant's reputation for truthfulness; (2) inconsistencies in the claimant's
4 testimony or between his testimony and his conduct; (3) the claimant's daily living
5 activities; (4) the claimant's work record; and (5) testimony from physicians or
6 third parties concerning the nature, severity, and effect of the claimant's condition.
7 *Id.* The ALJ may also consider a claimant's "unexplained or inadequately
8 explained failure to seek treatment or to follow a prescribed course of treatment."
9 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). If there is no evidence
10 of malingering, the ALJ's reasons for discrediting the claimant's testimony must
11 be "specific, clear and convincing." *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th
12 Cir. 2012) (quotation and citation omitted). The ALJ "must specifically identify
13 the testimony she or he finds not to be credible and must explain what evidence
14 undermines the testimony." *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.
15 2001).

16 Here the ALJ provided specific, clear and convincing reasons for
17 discrediting Plaintiff's claim of total disability:

18 The claimant's daily activities are consistent with the residual
19 functional capacity assessment above. For example, she was very
20 active in her pursuit of money to obtain drugs, spending much of the
day searching out and transporting wood pallets that she sold in order
to buy heroin. She also indicated that she attends to personal care,
goes grocery shopping, attends appointments, does laundry and light

1 housecleaning, prepares food, watches TV and reads, goes swimming
2 at the YMCA, visits with friends, and uses public transportation. She
3 does not drive a car because she does not have a license. Moreover,
4 she rents a room in house with other people.

5 Additionally, inconsistent statements and a significant legal history
6 create serious credibility concerns for the claimant. For instance, the
7 claimant alleged that she cannot work because of various mental and
8 physical impairments. However, she also stated that she was fired
9 after a urinalysis was positive for illicit drug use. She did not look for
10 more work because she was “discouraged” after her prior employer
11 refused to provide chemical dependency treatment. Being
12 “discouraged” has little relevance regarding a determination of
13 disability, especially when such discouragement stems from the
14 claimant’s misplaced sense of entitlement to chemical dependency
15 treatment.

16 The record reflects a reputation for lying because the claimant has
17 been convicted of various drug offenses and other crimes. By her own
18 account, she was incarcerated six times for theft. She has been
19 charged with forgery. Moreover, the claimant stated that she did not
20 use methamphetamine. However, she was incarcerated for possession
21 of methamphetamine and the record contains a drug screen that is
22 positive for the substance.

23 Tr. 28 (internal citations omitted).

24 The Court has reviewed the full record and substantial evidence supports the
25 ALJ’s conclusions.

26 **IT IS HEREBY ORDERED:**

27 1. Defendant’s Motion for Summary Judgment, ECF No. 23, is

28 **GRANTED.**

29 2. Plaintiff’s Motion for Summary Judgment, ECF No. 20, is **DENIED.**

1 3. The hearing on dispositive motions set for April 28, 2014, is

2 **VACATED.**

3 The District Court Executive is hereby directed to file this Order, enter

4 Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

5 **DATED** August 8, 2013.



Thomas O. Rice
THOMAS O. RICE
United States District Judge